In the High Court of Punjab & Haryana at Chandigarh.

Regular Second Appeal No.4656 of 2000.

Date of decision:19.9.2006.

Smt.Neelam Rani.

...Appellant.

Versus

Union of India and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

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Present: Mr.Sanjeev Gupta Advocate for the appellant.

Ms.Lisa Gill Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

The appellant was holding hawker's licence No.2119 in Rehri Market, Sector 19-C, Chandigarh with registration No.2859. On 18.3.1991, the Estate Officer of UT,Chandigarh (respondent) addressed communication to the appellant calling upon her to deposit a sum of Rs.3,000/-, within a period of 15 days, with the Chairman, Housing Board, Chandigarh as earnest money against construction of booths in different Rehri Markets. In compliance with this letter, the appellant

deposited an amount of Rs.3,000/- vide Bank draft No.87137 dated 21.3.1991. Before the materialization of this scheme,a devastating fire broke out in Rehri Market, Sector 19-C, Chandigarh on 9.4.1993 at about 9.30 PM. As a result, numerous persons suffered losses. The Chandigarh Administration framed a scheme for rehabilitation of fire victims and also constituted a Committee of senior officers to identify the fire victims.

On 17.4.1993, the Committee invited claims/objections for the inclusion/exclusion of any name of fire victims in the list and the last date fixed was 23.4.1993. Public notice was also released for the information of the general public. Open Darbar was held from 28.4.1993 to 30.4.1993 for hearing the claims/objections of the affected persons. A policy was drawn up for determining the eligibility of the claimants.

The appellant also applied to the said Committee as a fire victim. She took up the plea that she was running a stall of Hosiery/goods in Rehri Market, Sector 19-C, Chandigarh. She was holder of hawker's licence and was also registered for the allotment of booths under the scheme known as Allotment/Transfer of built-up booths in any Sector of Chandigarh, Rules,1991 (in short scheme of 1991) and that she had suffered losses in the fire incident. She appeared before the Screening Committee in the open Darbar. However, the other Rehriwalas raised an objection that Neelam Rani appellant was

selling goods in the parking area outside the Rehri Market and that she never worked in the Rehri Market. Therefore, her claim was rejected by the Committee vide report dated 3.5.1993. The appellant made a written request and sent representations but to no effect.

Thereafter she filed a civil suit in which she pleaded that she was allotted a site in the Rehri Market, Sector 19-C, Chandigarh. She was holding licence No.2119. She suffered losses in the fire incident of 9.4.1993. Her claim was rejected by the Committee in the open Darbar held on 28.4.1993 and 29.4.1993. Hence, she prayed that her site in Rehri Market, Sector 19-C, Chandigarh be not cancelled with the further prayer that her name be entered in the new list for granting suitable place/site in the Rehri Market.

The respondents, in the written statement, took an objection that notice under Section 80 CPC which was mandatory was not served on them. No site was ever allotted to the appellant in Rehri Market of Sector 19-C, Chandigarh. Rather,she was working outside Rehri Market and,therefore, she was not eligible for the relief claimed. It was admitted that a fire broke out in Rehri Market on 9.4.1993 in which most of the Rehries were burnt. Spot inspection was held on 11.4.1993 by a team of the officers of the administration. Since the appellant was working outside the Rehri Market, she had not suffered any loss and,therefore, her claim was not included in the tentative list published for the Rehri Market on 17.4.1993. Her claim was heard on 28.4.1993.

None of the Rehriwalas present there supported her claim. Therefore, the Screening Committee had rejected her claim. Hence, dismissal of the suit was prayed.

The learned trial Court framed the following issues:-

1.Whether the plaintiff is entitled for permanent injunction as prayed for?OPP.

2.Whether the plaintiff is entitled for mandatory injunction as prayed?OPP.

3.Whether the suit is not maintainable?OPD.

4.Whether no notice u/s 80 CPC has been served upon defendant?OPD.

5.Whether plaintiff has no cause of action?OPD.

6.Relief.

The appellant examined herself as PW-1, Prabhakar Sharma as PW-2, Dilbagh Kumar Jain as PW-3, Bimla as PW-4, Joginder Singh as PW-5, Beer Bhan as PW-6 and Karmi Devi as PW-7. She also proved documents.

On the other hand, the respondents examined Prabhakar Sharma, Junior Assistant as DW-1.

On the basis of this evidence, the learned trial Court held that the service of notice under Section 80 CPC was exempted under Section 80(2) CPC. On merits the trial Court reached the conclusion that the appellant had not given any site number in the Rehri Market where she was allegedly running her business. Therefore, she was neither entitled to permanent injunction nor she was entitled to

mandatory injunction. Accordingly, the suit was dismissed by the learned trial Court vide judgment and decree dated 19.9.1994.

The learned lower Appellate Court up-held the findings of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 28.11.2000.

Hence, the present appeal.

The following substantial questions of law arise:-

1.Whether the applicant was entitled to be considered for the allotment of a built up booth either as a fire victim or otherwise?

2.Whether the Courts below have failed to appreciate documentary evidence and omitted the point of determination?.

The fire incident took place on 9.4.1993. Admittedly, numerous persons suffered losses. The administration had also conducted spot inspection. List of fire victims was prepared . Even open Darbar was held on 28.4.1993 and 29.4.1993. The appellant had also presented herself before the Committee in the open Darbar and had put up her claim to be considered as a fire victim. This fact is clearly demonstrated in the report dated 3.5.1993 prepared by the Screening Committee constituted by the respondents. Her claim was rejected only on the plea that she was holder of a hawker licence; she was selling the goods outside the Rehri Market in the parking area; that she was not

working inside the Rehri Market; that she had not suffered any loss; her case was not supported by the Rehriwalas and her claim was rejected by the Screening Committee.

The appellant did not sit silent thereafter. She had made numerous representations and a copy of one of such representations is proved as Exhibit DW1/1 but she failed to get reply. Thereafter, she instituted the civil suit. As discussed above, she has proved her hawker licence No.2119 which was meant for Rehri Market, Sector 19-C,Chandigarh. This licence authorised the appellant to function inside the Rehri Market. Even Prabhakar Sharma, DW1 has admitted in his cross-examination that they issue the hawker licence for sitting in the Rehri Market. He also admitted that the person who sits outside the Rehri Market, his or her goods are confiscated. He also admitted that according to the record available with him, the goods of the appellant were never confiscated. Therefore, this documentary evidence led by the appellant coupled with the statement of Prabhakar Sharma DW-1 who is the dealing official in the office of Estate Officer, Chandigarh has clearly proved that they issue hawker licence for sitting inside the Rehri Market, Sector 19-C,Chandigarh. Therefore, the conclusive presumption is that she was sitting in the Rehri Market. She was running the business in Rehri Market, Sector 19-C, Chandigarh by holding hawker licence. She may not have any particular site in the Rehri Market, as the hawkers sell the goods either moving around or

while sitting on the ground.

Not only this documentary evidence, she had examined numerous witnesses Dilbagh Kumar Jain, PW-3, Bimla PW-4, Joginder Singh, PW-5, Bir Bhan PW-6 and Karmi Devi, PW-7. These witnesses deposed that they themselves were Rehriwalas inside the Rehri Market, Sector 19-C and they had themselves suffered losses in the fire incident of 9.4.1993. They all further deposed that the appellant was working in the Rehri Market, Sector 19-C, Chandigarh. She was running the business of garments and in the fire incident which took place on 9.4.1993, she had suffered losses as her goods were burnt. Therefore, the appellant has succeeded to prove that she was a fire victim.

It is also proved by the evidence led by the respondents that even the persons holding hawker licence used to sit inside the Rehri Market, Sector 19-C, Chandigarh and that they have suffered losses and that they were considered for being allotted constructed booths. This fact is admitted even by Prabhakar Sharma, DW-1 in his cross-examination when he said that other persons who were allotted the booths were having hawker licence. No distinction was made by the respondents between the allottees of particular site in the Rehri Market or hawker licence holders or the holders of handcart licence. So far as fire incident was concerned, any person holding any licence for Rehri Market, Sector 19-C, Chandigarh and who had suffered losses was considered for allotment of constructed booth and that is clear even

from the report dated 3.5.1993 prepared by the Screening Committee constituted by the respondent/administration and proved on the file as Exhibit DW1/3.

The learned counsel for the respondents has placed reliance on the judgment of this Court reported as **Sarju Kumar Versus Chandigarh Administration,** (2001-1) Punjab Law Reporter 703. However, this judgment is not applicable to the facts of the present case as the reported case related to a person who was sub-lettee of a Rehri licence holder. In the present case, the appellant was herself a holder of hawker licence.

The appellant has clearly proved by leading documentary evidence that she was holding a hawker licence No.2119 for Rehri Market, Sector 19-C, Chandigarh (Exhibit P-1). Her registration number was 2859. Even Prabhakar Sharma, Junior Assistant in the office of Estate Officer, Chandigarh while appearing as DW-1 has deposed that Neelam Rani was holding hawker licence No.2119. However, it was stated by him that the licence was valid up to 31.3.1991. The photo copy of the licence was proved as Exhibit P-1 but the date of its expiry is not mentioned in it. If the licence was to expire on 31.3.1991, then it was incumbent upon the respondents to mention this fact in the hawker licence issued by them to the appellant but in the licence, photo copy of which is Exhibit P-1, the date of expiry is not stated.

Even if it is presumed that the hawker licence was to expire on 31.3.1991 and that it was not got renewed by the appellant,then some notice was required to be issued by the respondents to appellant not to work under hawker licence No.2119 as the validity of the said licence had expired. No such evidence has been led by the respondents to prove that any such notice was issued to her by them.

There is another reason also. The appellant has proved a copy of letter dated 18.3.1991 issued by the respondents to the appellant as Exhibit P-2 by which the appellant was required to deposit a sum of Rs.3,000/- within 15 days from the date of issuance of that letter as earnest money with the Chairman Housing Board, Chandigarh against the construction of booths in different Rehri Markets. Even Prabhakar Sharma DW1 has admitted having issued this letter to the appellant. In compliance with this letter, the appellant sent an amount of Rs.3,000/-by way of Bank draft dated 21.3.1991 to the Chairman, Housing Board, Chandigarh. Its copy is proved on the file as Exhibit P-3. It was duly received in the said office and its seal/receipt is also visible from this document. It means, therefore, that the appellant had submitted earnest money as desired by the respondents.

The submission of learned counsel for the respondents was that no Bank draft was sent along with this letter and the payment of money by the appellant to the respondents is not proved.

This submission has no merits at all. Bank draft number is

mentioned in the letter dated 21.3.1991 (Exhibit P-3). The date is mentioned. The amount is also mentioned. The name of the Bank is also mentioned. Above all, this letter was received in the office of Chandigarh Housing Board. Its seal and receipt number are also mentioned. If the Bank draft had not been received along with this letter, the Chairman Housing Board would have raised an objection at the time of receiving this letter from the appellant or they would have sent the subsequent letter thereafter informing the appellant that no such Bank draft was received with the letter but no such step was taken by the respondents. Therefore, it is clearly proved that the appellant had remitted this amount to the respondents. Obviously, therefore, the appellant was one of the applicants in the Scheme framed under the **Allotment/Transfer of built-up booths in any Sector of Chandigarh, Rules,1991.** The appellant had become eligible to be considered under this scheme as one of the applicants.

Since the appellant has proved herself to be a fire victim, therefore, she was covered by the Scheme prepared on 16.4.1993. Otherwise also she was eligtible under the Allotment/Transfer of built-up booths in any Sector of Chandigarh Rules,1991 under which she had already paid the earnest money as was called from her. The substantial questions of law framed above are answered accordingly in favour of the appellant.

This appeal is accordingly accepted.The impugned

judgments passed by the learned trial Court dated 19.9.1994 and by the learned lower Appellate Court dated 28.11.2000 are set aside.

The respondents are directed to enter the name of the appellant in the list of candidates for granting a suitable site to her under either of these schemes i.e. either under the scheme known as Allotment/Transfer of built-up booths in any Sector of Chandigarh, Rules,1991 or as a fire victim under the scheme framed on 16.4.1993 for the fire victims. Till her name is included in the list and considered, she will not be uprooted from the present site.

September 19,2006. (S. N. Aggarwal)
Jaggi Judge